

RESOLUTION NO. 2014334

RE: AUTHORIZE CONTRIBUTION TO WAYNE COUNTY

Legislators BORCHERT and ROLISON offer the following and move its adoption:

WHEREAS, Wayne County is presently involved in litigation which will advance the issue of whether the New York State Tax Law concerning In Rem tax foreclosure proceedings will have supremacy over the Federal Bankruptcy Code, and

WHEREAS, there is division and confusion in the State and Federal courts over the issue of which law to apply when the State Tax Law and the Bankruptcy Code conflict, and

WHEREAS, the County of Dutchess has suffered the detrimental effects of such a conflict in a recent Bankruptcy Court action, and

WHEREAS, Wayne County has incurred legal fees in excess of \$151,000 to date in successfully representing its position in Bankruptcy Court litigation, and

WHEREAS, Wayne County has solicited contributions, through the New York State Association of Counties, to its legal defense fund from other counties in New York which suffer the complications and threat to the integrity of their In Rem tax proceedings presented by virtue of the conflict in law, and

WHEREAS, the County Attorney has opined that a contribution from the County of Dutchess to Wayne County to assist Wayne County in its litigation costs is a lawful county purpose which may result in a benefit to the County of Dutchess, now therefore, be it

RESOLVED, that the County of Dutchess contribute \$2,000 to Wayne County for the specific purpose of assisting Wayne County in its litigation referred to herein.

CA-220-14

JMF/ca/G-0124

11/17/14

Fiscal Impact: See attached statement

STATE OF NEW YORK

ss:

COUNTY OF DUTCHESS

This is to certify that I, the undersigned Clerk of the Legislature of the County of Dutchess have compared the foregoing resolution with the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 4th day of December 2014, and that the same is a true and correct transcript of said original resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Legislature this 4th day of December 2014.

CAROLYN MORRIS, CLERK OF THE LEGISLATURE

FISCAL IMPACT STATEMENT

NO FISCAL IMPACT PROJECTED

APPROPRIATION RESOLUTIONS *(To be completed by requesting department)*

Total Current Year Cost \$ 2,000

Total Current Year Revenue \$ _____
and Source

Source of County Funds *(check one)*: Existing Appropriations, Contingency,
 Transfer of Existing Appropriations, Additional Appropriations, Other *(explain)*.

Identify Line Items(s):

Related Expenses: Amount \$ _____
Nature/Reason:

Anticipated Savings to County: _____

Net County Cost (this year): \$2,000
Over Five Years: _____

Additional Comments/Explanation:

Unexpended current year funds will be allocated for this one time contribution to Wayne County.

Prepared by: Rachel Kashimer, Budget Office

11/18/2014



NYSAC

NEW YORK STATE
ASSOCIATION OF COUNTIES

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President: Anthony J. Picente Jr., Oneida County Executive Director: Stephen J. Acquario, Esq.

October 6, 2014

Dear County Attorney:

Wayne County is currently involved in litigation that has the potential to seriously disrupt the In Rem Tax foreclosure procedure. This challenge to Article 11 of the Real Property Tax Law is being tried in Western District of New York Bankruptcy Court and has the following fact pattern:

- 1) The plaintiff and original property owner owed \$7,292 in unpaid property taxes.
- 2) Wayne County and the plaintiff entered into an installment payment agreement, which was later defaulted upon after one payment.
- 3) After proper notice, the in rem tax foreclosure process was commenced, with the transfer of title going to Wayne County and the property subsequently sold at public auction for \$4,000.00 to a new investor.
- 4) This investor, now with title, proceeded to make home improvements investing substantial time and money into rehabbing the property.
- 5) The plaintiff, subsequent to all the above actions and within the 24 month window of title transfer, filed an Adversary Proceeding in Federal Bankruptcy Court claiming the transfer commenced through the in rem proceeding is void and should be construed as a fraudulent transfer under Section 548 of the US Bankruptcy Code. Essentially the argument is under Section 548 of the US Bankruptcy Code a transfer is voidable if it was conducted within two years of a bankruptcy petition and that transfer receives "less than reasonably equivalent value".
- 6) This bankruptcy court has indicated it would accept the fair market value for the property in this matter to equal \$49,000.00, well above the \$4,000.00 received at auction. The determination of this number was derived by the plaintiff's appraiser approximately one and one-half years after transfer and includes the improvements made by the new investor/auction purchaser. The county has indicated that using this appraisal may be a triable issue of fact.
- 7) Due to the fact that bankruptcy law is a specialized knowledge base, Wayne County hired outside counsel to defend their and New York State's process. Wayne County retained the services of Bankruptcy Attorney David MackKnight from Rochester New York. Due to the complexity of this matter legal fees have already reached approximately \$151,000.00 to the county.
- 8) There is a scheduled court date on this matter on October 23, 2014 where the Court is asking the parties to state their intentions, settle or trial. The County Legislative Board may not approve ongoing litigation, including appellate costs.

ADJOURNED

To 12/4/14

The purpose of this letter is to make you all aware of the threat this and other similar cases (such as Clinton County) pose to your county. The in rem tax foreclosure process is the only method counties have under New York State law to ensure local property taxes are paid not just to counties but to all local governments. Additionally, please be aware that the settlement Wayne County may be forced into is a choice between bad and worse. The settlement options are to either vacate the transfer of the property, returning it to the plaintiff with improvements and pay the auction purchaser tens of thousands in reimbursement costs, or pay the plaintiff the court determined market value minus taxes owed (\$49,000.00 minus \$7,000.00). Either way the county has expended significant amounts of local taxes to defend a valid state statute.

There is a third option. That is to continue to litigate this matter in bankruptcy court and file and pursue any necessary appeal. Unfortunately due to the legal costs Wayne County is not in a financial position to continue the litigation and therefore the county will not be able to achieve clarification in this conflict of laws case.

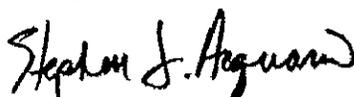
At NYSAC we have supplied an Amicus Brief on this matter and have created an In Rem Tax Foreclosure Subcommittee consisting of County Attorneys and County Treasurers. The goal of this subcommittee is to determine the best way to overcome matters such as this case that threaten the In Rem process, drive down auction bids and disrupt a county's ability to collect taxes for services provided by all local governments. Part of the Subcommittee evaluation is to determine if State or Federal Bankruptcy laws (which appear to be in conflict) need/can be changed through lobbying efforts and awareness. However changing this section of Federal law may be a difficult process considering it was just recently amended.

Please consider supporting Wayne County in this matter. Due to the impact this case has on all counties, we are asking that the counties of New York collectively create a financial pool to help fund this current matter and any subsequent appeal. We believe that \$2,000.00 per county could help Wayne County make the determination to keep fighting this matter and that in turn this investment will save all counties substantial court fees later on. NYSAC will provide the necessary invoice to your county for this representation.

Again, the other option is to continue to litigate in court. There is an encouraging holding stemming out of a Michigan Bankruptcy Court with a similar fact pattern (cite: **2014 WL 197692 (Bkrcty.E.D.Mich.)**). Here the court determined the State laws and the local government rights to foreclose on property to collect taxes supersede Section 547 of the US Bankruptcy Code. If we can get a determination at an appellate level stating the same we may be able to stop this issue before it spreads across the state.

Please contact Patrick Cummings, Assistant Counsel of NYSAC at pcummings@nysac.org if you can support this litigation. You may also contact Daniel Connors, Wayne County Attorney, at 315-946-7442. I thank you in advance for your consideration.

Sincerely,



Stephen J. Acquario
Executive Director

Committed to counties since 1925

Albany, Allegany, Bronx, Broome, Cattaraugus, Cayuga, Chautauque, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Dutchess, Erie, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Kings, Lewis, Livingston, Madison, Monroe, Montgomery, Nassau, New York, Niagara, Oneida, Onondaga, Ontario, Orange, Orleans, Oswego, Otsego, Pulnam, Rensselaer, Queens, Richmond, Rockland, St. Lawrence, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Suffolk, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Westchester, Wyoming, Yates